1949.

File No. O. Requisitioning/49 Part II

Legal Department
A BRANCH

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Subject:—

Opinion Under the
Bombay Land Requisition Act.

(for previous paper please see Pt. 1)

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File No. O. Requisitioning/49 Pt. II

Gen. 194

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KNP.13/6/

Office of the R.L.A.

The Commissioner of Police, Bombay, writes in his letter dated 3rd of March 1949.

"On the introduction of the Greater Bombay Scheme in October 1945 certain flats, the landlords of which were prepared to transfer the tenancy thereof in the name of the Commissioner of Police, were taken over by this Department from the then District Superintendent of Police, Bombay Suburban District. The abovementioned flat (i.e. the flat on the ground floor of 'Om Shree Gita Amrut') came in possession of this Department according to the aforesaid arrangements and there is nothing on the record of this office to show that the flat would be returned on request. The letter dated 9-3-1944 addressed to Mr. Kidd by Mr. Waghela is not traceable in the District Superintendent of Police's record transferred to this Department when the Greater Bombay scheme came into force. I am already short of accommodation for officers especially at Santacruz and it is not feasible to release the flat as desired by Mr. Waghela unless alternative accommodation at Santacruz is made available to this Department by Government."

Subsequently the Commissioner wrote that he had received notice from Craigie Blunt & Caroe, solicitors on behalf of Mr. Waghela, who claimed the premises back for his use on the ground that they are bona fide and reasonably required by him for the use of one of his dependents, namely, his son who is of age and wants to be married. The Commissioner's inquiry shows that the landlord is not in immediate need of the additional accommodation as the marriage is not yet arranged. He feels, however, that it is not possible to challenge the statement without documentary evidence in a court of law, and the owner may thus get possession of the premises throught the court. The Commissioner, therefore, requests that the flat may be requisitioned for the occupation of a police officer of the Greater Bombay Police Force. The R.L.A. is requested to advise.

2. The flat was vacant at the time it was taken over by the Police Department, and it seems that ever since 1944 it has been occupied by a Police

Officer. There being no vacancy, section 6 of the Bombay Land Requisition Act would not be applicable. It is doubtful whether section 5 would apply inasmuch as it would be difficult to make a declaration that the tenant was not actually residing therein for a continuous period of six months immediately preceding the date of the order. Section 5 was not intended for converting a tenan by government officer into possession by means of requisition. Action under the Bombay Land Requisition Act would not, therefore, be advisable.

3. At the same time I am of opinion that we can successfully defend the suit. The Commissioner enquiry shows that the marriage is not yet arranged. Moreover, no reverence to any such purpose was made by the landlord in his letter which he wrote to H.M.(R.D.). The reason given in that letter was that he has no income and that, therefore, he finds it advisable to seek H.M's help for obtaining vacant possession, and that he has been trying to get possession for the last five years. It is, therefore, obvious that Mr. Waghale's idea was to get vacant possession so that he could make more money out of the flat either by way of demanding a premium from a new tenant or by enhancing rent to such tenant. Under sub-section (2) of section 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, no decree for eviction shall be passed on the ground that the premises are reasonably and bona fide required by the landlord for occupation by himself if the Court is satisfied that having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. If the Court is acquainted with all

the circumstances, namely, that the flat was originally vacant, that it has been in continuous occupation of a Police Officer since 1944, that no alternative accommodation for an officer of an essential service is available, that the premises are not wanted by the landlord himself, that the excuse given by him is not true, and that his true object is to make money out of the flat, I do not think that the Court would grant a decr for eviction.

4. I would, therefore, suggest that the best course would be to defend the suit if and when filed.

Sd/-
16/4

o.c. Remembrancer of Legal Affairs.

U.R. to D.S. R.B. (Mr. Kazi) No. 4186, dated 18/4/49

K.N.P.
6/6
A.C.

If the facts be that the premises in question have been kept locked and have not been occupied for six months or have been occupied only intermittently for short periods, there would be no legal impediment in the way of making a requisitioning order. See R.L.A's opinion No. 8557, dated the 9th September 1948. However, it appears that the occupant is an old lady who is besides suffering from paralytic stroke and has gone out for health purposes to Poona. In these circumstances it is a matter for Government's consideration whether it would be expedient to requisition the peremises, as the old lady would in all probability try to evoke the sympathy of the Court. Compare the Advocate General's opinion No. 37 of 1948, dated the 23rd August 1948.

Sd/- P.M.Lad,
16/5/49.

c.c. Remembrancer of Legal Affairs,

U.R. to R.D. (Accommodation), No. 5468, dated the 18th May 1

K.N.P.
6/6
4.C.

Office of the R.D.A.

Question whether there was a transfer of tenancy after coming into of the Land Requisition Ordinance, 1947.

The main question for consideration in this case in whether the tenancy was transferred to Mr. D'Lima in October 1947 as alleged.

2. It is admitted that the former tenant Mr. Cabral continued to occupy the premises till July 1948, when he left for England. It is alleged that Mr. Cabral transferred the premises to Mr. D'Lima in October 1947 and continued in the premises merly as a licensee. There is absolutly no explanation as to why Mr; Cabral should have transferred the premises in October 1947 and agreed to be in the premises merely as licensee for nearly six or seven months before he could sail for England. This story appears to be a pure invention forth the purpose of circumventing the provisions of the Bombay Land Requisition Ordinance 1947 and the Land Requisition Act, 1948. Under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as transfer of tenancy is prohibited. This Act came into force on 19th January 1948 before which date transfer of tenancy rights was allowed. But the Land Requisition Ordinace came in the way, and any transfer of tenancy rights involved a vacancy with a right to Government to requisition the premises. In view of these provisions the transfer of tenancy rights had to be ante-dated so that the provisions of the Land Requisition Ordinace could not be attracted. It is for this purpose that the transfer of the tenancy rights is alleged to have taken place in October 1947. Besides, there appears to be absolutely no evidence beyond the rent receipts to prove the transfer of the tenancy. The rent receipts as observed by R.D. (Accompanied) are suspicious. The landlord seems to have been induced to agree to the transfer

transfer of
the tenancy for the consideration of an increase in the rent, and consequently his evidence can have no probative value. In these circumstances the transfer of tenancy in October 1947 does not appear to be real, and there would be no legal objection to requisition the premises. The fact that a suit has been filed against Mr. Burke in the Small Causes Court would be no valid ground for postponing or withdrawing the requisitioning order.

Sd/- P.M.Lad
30/6

o.s. Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 7293, dated the 1st July 1949.

K.N.P.
6/6
4.C.

Office of the R.L.A.

It is no doubt true that in the case of Dr. Parulekar some doubt was thrown by Tendulkar J. about a vacancy arising upon the death of a person when his heir were in actual occupation. But that case was decided on its special facts which can be distinguished. In this case there is no heir or person living with the deceased who was a bachelor, and the place is actually locked. The heirs to this particular tenancy are still to be determened, and the heirs presumptive have all accommodation of their own at present. In these circumstances I feel that it would be legally feasible to requisition the flat under section 6 and sustain that order in case it is challenged.

Sd/- P.M.Lad.
7/7

o.s. Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation) No.7572, dated the 8-7-1949.

K.N.P.
6/6
4.C.

Whether the firm can claim sub-tenancy in the flat-Bombay Land Requisition Act, 1948 - Sections 6(1),(4)(b). Bombay Rents, Hotel Rates and Lodging House Rates Contral Act, 1944 - Section 10.

It appeats that the Flat No. 15 Raj Mahal, Churchgate Reclamation, was originally let out to one Mr. Johnston, an employee of Messrs. Eva Fraser and Co. On his vacating the flat in 194 it was occupied by Mr. Ash, another employee of the same firm. Mr. Ash gave notice to the land lord that he was vacating the flat at the end of June 1949, whereupon the manager of the landlord wrote to Government that Mr. Ash was occupying the flat since 1947 and the rent was received direct from him and on his vacating the falat, th landlord's ailing mother should be allowed to occupy it. He also pointed out that Messrs. Evans Fraser and Co. were claiming to be the sul tenants of their own employee, Mr. Johnston. On 15th April 1947 Mr. Ash wrote to Evans Fraser and Co. that on vacating the flat by Mrs Johns n after the death of her husband the flat was sub-let by Mrs. Johnston to the Company and that he was occupying it with the permission of the Company and he would agree to vacate the flat o the termination of his services. But on 24th May 1949 he again wrote to the Company that he was advised to be the tenant of the property an consequently he gave notice to quit in order that he might not be involved in any dispute afer hi departure and that if the Company thought that they were the tenants of the property they might take up the matter with the landlord. On 15th July 1949 Government by an order issued under clause (b) of sub-section (4) of section 6 of th Bombay Land Requisition Act, 1948, directed the manager of the landlord to let the premises to one Mr. Mans. In the meantime, Messrs. Evans Fraser and Co. have obtained a consent decree in the High Court in suit No.807 of 1949,

whereby Mr. Ash agreed to hand over andva vacate and deliver to the Company the possession of the flat and the Company has agreed to pay the landlord for and on behalf of themselves and of Mr. Johnston rent in respect of the said flat. On the strength of this consent decree, the letters of Mr. Ash and one telegram of Mrs. Johnston on page 63 dated the 16th May 1947 wherein she admitted the sub-lease of the flat to EgansFraser and Co. on the monthly rent of Rs. 135, Messrs. Egans Fraser and Co. are now claiming to be the sub-tenants of the flat and disputing the validit of therequisition order passed by Government directing the landlord to let the premises to Mr. Mans- The question raised for the R.L.A's consideration is whether the order passed by Government is valid and should be enforced.

2. It is undisputed that Mr. Ash was treated by the landlord as the tenant of the flat after it was vacated by Mrs. Johnston. Mr. Ash also considered himself to be the tenant of the flat and was paying the rent all the while. Egans Fraser & Co. never put forward any sub-tenancy until after the notice was given by Mr. Ash to the landlord intimating the termination of his tenancy. However, there are two broad facts which have to be considered in the light of these circumstances. One is that the rent bills have been all the while issued in favour of Mr, Johnston even after the flat was vacated. The last rent receipt dated the 1st July 1949 was passed in favour of Mr. Johnston. It is clear from this that the landlord continued to recognise Mr. Johnston as the tenant of the flat. He has not recognised either Mr. Ash, much less Evans Frager and Co., as the tenant at any time. The fact that Mr. Ash was paying the rent on behalf of

Johnston would not possibly give him the status of a tenant. Another important fact is the telegram which was sent by Mrs.Johnston on 16th May 1947 to Evans Fraser and Co. admitting the sub-lease to them. It is very difficult to say that this telegram is a fabrication, for if Evans Fraser and Co. were to set up a false claim of sub-tenancy, they would not have been able to prdduce a telegram dated 16th May 1947. Consequently, this telegram is to be conceded as genuine. In considering the effect of this telegram, we have to take into account the future conduct of Messrs. Evans Fraser and Co, and the provisions of the law then existing. Under section 10 of the Bombay Rents, Hotel Rates and Lodging House Rates Control Act, 1944, which was then in operation, it was open to a tenant to sublet any portion of his premises to a sub- tenant, <u>provided he forthwith intimated in writing to his landlord the fact of his having so sub-let the premises and also the</u> rent at which they had been sublet. There is absolutely nothing on record to show that Mrs. Johnston informed the landlord that she had sublet the premises to Evans Fraser and Co. Consequently there was a breach of section 10. Besides, there is also nothing on record to prove that Evans Fraser and Co at any time asserted their sub-tenancy until recently. It may be a fact that Evans Fraser and Co. thought that they were the sub-tenants of the flat and on their behalf their employee Mr. Ash was occupying the flat. But this would not be sufficient to constitute a sub-tenancy; The consent decree which is merely an after of thought would in no way re-inforce the claim of Messrs. Evans Fraser and Co. The letters of Mr. Ash also disclose that by pressure of

circumstances, he agreed to admit sub-tenancy.

In these circumstances, the consent decree can be given no weight at all. The telegram of Mrs. Johnston would not give any sub-tenancy in favour of Messrs. Evans Fraser and Co. for want of intimation to the landlord and the subsequent conduct of Evans fraser and Co. in failing to assert their claim disproves sub-tenancy. The landlord by issuing the rent Bills in favour of Mr. Johnston can be deemed to have continued the tenancy in favour of Mr; Johnston, which on his death, would be in favour of his wife Mrs. Johnston- "Tenant" as defined in section 5(11) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, means any person by whom or on whose account rent is payable for any premises. The rent being paid on behalf of Mr. Johnston, his wife, after his death, would be deemed to be the tenant of the flat. On Mr. Ash vacating the flat, a vacancy would be deemed to have arisen under section 6(1) of the Bombay Land Requisition Act, 1948, and consequently the order issued by Government under cluse (b) of sub-section (4) of section 6, directing the landlord to let the premises to Mr. Mans, would be valid. There would, therefore be no legal objection for Government enforcing that order.

Sd/- P.M.Lad
26/7

c.c. Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 8469 dated the 26th July 1949.

K.M.P.
6/6
4.C.

Office of the R.L.A.

Liability for damage done to requisitioned flat.

Government, being liable to pay damages, can clai reimbursement from the allottee of the premises. Consequently there would be nolegal objection to deducting Rs.145-8-0 from the honorarium and lecture fees due to Dr. Lakshmanan and paying the same to Messrs. Podar & Sons.

Sd/- P.M.Lad.
16/8

o.c. Remembrancer of Legal Affairs.

U.R. to H.& L.G.D.,No. 9048, dated the 11th August 1949.

K.N.P.
6/6
4.C.

Office of the R.L.A.

The notification No. LND 651 dated 10-2-1948 issued by the Collector of Nasik in which he has specified the Deolali Cantonment as the area for the purpose of section 4(1) of the Bombay Land Requisition Ordinance, 1947, was not scrutinised in L.D. A similar nofification under section 6(1) of the Bombay Land Requisition Act, 1948, to be issued in respect of the Cantonment of Belgaum was scrutinised in L.D.; but the present question was not then raised.

2. The question which arises for consideration in this case is whether the Bombay Land Requisition Act, 1948, can be extended to cantonment areas.

3. The Bombay Land Requisition Act, 1948, has been enacted in virtue of the power given by the Government of India, ministry of Law, Notification No. F.311/47 C.&G. dated 21st October 1947, whereby in exercise of the powers conferred by section 104 of the Government of India Act, 1935, the Governor General empowered all Provincial Legislatures to enact law with respect to requisitioning of land being a matter not enumerated in any of the Lists in the Seventh Schedule to the said Act. Entry No.2 in List No. I in the Seventh Schedule to the Government of India Act, 1935, however, refers areas as one of the matters with respect to which the Central Legislature can make laws; The Central Legislature has already made a law called the Cantonment House Accommodation Act, 1923, which is referable to the said entry No.2 in List No: I That Act contains provisions which are virtually of the nature of requisitioning; but they seem to be applicable to house which are deemed suitable for occupation by a military officer or a military mess. The possibility of conflict of law relating to requisitioning made by a Province in pursuance of the powers so conferred with

a law made by the Central Government with respect to the entry of regulation of house accommodation in cantonment areas cannot be ignored. It may also be argued that the power given to the Progincial Legislature is in respect of something which did not figure in any of the Lists, and inasmuch as regulation of house accommodation in cantonemtn areas figures in List No.I and includes therein, according to the current legislative ppractice (see Croft v. Dunphy, 1933 A.C.156) a power to requisition such accommodation, the power of requisitioning land given to the Provincial Legislature must be deemed to be exclusive of the power which the Central Government already has under entry 2 in List No. I. In any case, requisitioning under the Bombay Land Requisition Act, 1948, would inevitably conflict with the requisitioning of house accommodation by cantonment authorities under the Cantonment House Accommodation Act, 1923. The requisitioning of accommodation other than house accommodation would not be of much use to the Provintial Government, since the land in the cantonment belongs to the Government.

4. In these circumstances it would be advisable not to extende the Bombay Land Requisition Act to cantonment areas. The notifications issued in respect of any cantonment areas may be cancelled.

Sd/- P.M.Lad.
16/8

Remembrancer of Legal Affair

U.R. to R.D. (Accommodation) No. 9288, dated the 18th August 1949.

K.N.P.
6/6
4.C.

Office of the R.L.A

Bombay Land requisition Act 1948: Transfer of business along with tenancy.

Attention is invited to R.L.A's Opinion No. 1851 dated the 16th February 1949. That opinion applies to cases where there was a bona fide transfer or assignment of business, since presumably it was not the Government's policy to requisition premises involved in such transfer or assignment. There is reason to believe that the so-called transfer of business in this case is merely a cloak to cover the transfer of a residential flat. The true factual position should be got ascertained, if necessary by inspection of the premises and if Government is satisfied that the transfer was fraudulent there would be no objection to requisitioning the flat under Section 6(4).

Sd/- P.M.Lad
12/8

cc. Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 9181 dated 13/

K.N.P.
6/6
4.C.

Office of the R.L.A.

It appears that the case is not covered by the press note dated the 18th December 1948 as the original application for permission was made on the 26th July 1948 and was granted on the 25th JulyOctober 1948. It is not quite clear from the record under what provisions of law this permission was granted. Permission could have been granted under sub-section (3) of section 6 of the Bombay Land Requisition Act, 1948, or it could be granted under the Bombay Land Requisition (Exemption) Rules, 1948 It is not known whether the case is covered by item 2 in the Schedule to the Rules. In any case it would fall under item 5 of that schedule. The order granting permission says that it is liable to cancellation for sufficient cause. If, however, it is construed as permission granted under the Rules, there will be no power to cancel it excepting for non-compliance with the terms and conditions specified in Rule 4. Of such non-compliance there is no evidence, with the result that the cancellation of the permission under the Rules would not be quite legal. We can, however, take the stand that the permission was granted under sub-section (3) of section 6, in which case it will be liable to cancellation for the cause shown in this case, viz., an attempt made to accept pugree from Mr. Raja. In that view, the requisitioning order would be quite valid. There is no objection as the Act now stands, to partial requisition or partial derequisition. The three blocks which have thus been continued under requisition are now stated to have been occupied unauthorisedly. There is no provision in the Act for prosecuting a person for such unauthorised occupation. Sub-section (5) of section 6 would not apply because the occupation in this case is after the order of requisitioning. The proper thing to do is to evict the unauthorised occupants unde section 11 of the Act.

K.N.P.
4/6
4.C.

P.M.LAD. 12/9
U.R. to R.D. (Accommodation) Remembrancer of Legal Affairs No. 10306 dated the 13th Sept 1949

Prosecution for not giving intimation in proper form to proper authority.

Land Acquisition Act, 1948 -- Secs. 6(1),(5).

It is true that under section 6(1) of the Bombay Land Requisition Act, 1948, intimation of a vacancy has to be given in the prescribed fprm to an officer authorised in this behalf by the Provincial Government, and the intimation given in the present casbe is not in the prescibed form; nor does it appear to have been given to an officer authorised by the Provincial Government but the intimation is addressed to the Assistant Secretary to the Government of Bombay, Land Requisitioning Department, and the information contained in the intimation substantially complies with the requirements contained in the prescribed form. Under the Land Requisition Ordinace, 1947, which was replaced by the Land Requisition Act, 1948, the officer authorised to recive intimation of a vacancy was the Secretary to the Government of Bombay, Health and Local Government Department. It appears that this subject "Accommodation" is now transferred to the Revenue Department. It is not known what officer is now authorised to receive intimation of a vacancy. In the circumstances, the intimation addressed to the Assistant Secretary, Land Requisition Department, Bombay may be considered at the most an irregularity when the intention to address the intimation to an officer dealing with the matters underthe Land Requisition Act apparent. It would therefore, appear that a prosecution for failing to give the intimation in the appropriate form and to an authorised officer would not be advisable as it would be treated a technical offence and the Court is not likely to take any serious notice of the breach.

Sd/- P.M.Lad
27/9

o.c. Remembrancer of Legal Affairs.
U.R. to R.D.(Accomm.) No.10985, dated the 30th Sept.1949.

K.M.P.
6/6
4.C.

Office of the R.L.A.

It appears from the statement of facts on pages 47 to 51 ante, that certain plots of land in Bombay were requisitioned in December 1942 under rule 75A(1) of the Defence of India Rules, On the request of the Bombay Government made in their letter R.D. No.201-A-1793-A dated 21st August 1947 (at page 15 ante), the Government of India Accorded sanction to the acquisition of these plots for the Government of Bombay under section 5 sub-section (3) of the Requisitioned Land (Continuance of Powers) Act, 1947 (see page 13 ante). Accordingly, the Collector of Bombay issued acquisition notices in respect of these plots on 18th February 1948 under section 5 sub-section (3) of the Requisitioned Land (Continuance of Powers) Act, 1947, and notices were served in Feburary 1948 on the owners of these plots. (See page 31 ante). In the meantime, Government of Bombay issued notices for acquisition of these plots under the Land Acquisition Act, 1894 before the Collector acquired these plots under the authority of the Government of India under the Requisitioned Land (Continuance of powers) Act, 1947, It appears, however, that these notices were later on cancelled by Government on 10th May 1949. Pending these proceedings, that is, those, under the Land Acquisition Act, 1894 and the Requisitioned Land (Continuance of Powers) Act, 1947, all these plots were requisitioned under the Bombay Land Requisition Act, 1948 on 15th June 1948 as it was considered that the cost of acquiring these plots was heavy as compared with the compensation that might be required to be paid if they were requisitioned under the Bombay Land Requisition Act, 1948. Government considers that in these circumstances the best course would be to continue these properties under the Bombay Land Requisition Act, 1948. The R.L.A. is requested to advise on the following questions :-

1. Whether in view of the fact that these properti

were already acquiredby the Collector of Bombay under the Requisitioned Land (Continuance of Powers) Act, 1947, Government Order H. & L.G.R. No. R. 432, dated 21st June 1948 (at page 7 ante), the order of requisition under section 5 sub-section (1) of the Bombay Land Requisition Act, 1948 is valid.

2. Whether in view of the Collector's acquisition notices under the Requisitioned Land (Continuance of Powers) Act, 1947, referred to above, these properties can be requisitioned under section 7 of the Bombay Land Requisition Act, 1948.

Under section 5 sub-section (1) of the Requisitioned Land (Continuance of Powers) Act, 1947, subject to the provisions of syb-section (3) the appropriate Government may, at any time, whnna any requisitioned land continues to be specially requisitioned under section 3, acquire such land by publishing in the official gazette a notice to the effect that such Government has decided to acquire such land in pursuance of this section. Under sub-section (2) when a notice as aforesand is published in an Official Gazette, the requisitioned land shall on and from the beginning of the date on which the notice is published vests absolutely in the appropriate Government free from all encumbrances and the period of such requisition of such land shall end. It is clear from these provisions that on and from the beginning of the day of which notice of acquisition of the requisitioned land as published in the Official Gazette, the requisitioned land would vest absolutely in the appropriate Government free from all encumbrances and the period of requisition also would end; The Collector of Bombay issued notices under section 5 in respect of the acquisition of the requisitioned plots. It is not, however, clear from these papers whether the Collector published these notices in the Officeal Gazette as provided in section 5 sub-section (1). If he so did. the requisitioned plot of land immediately on the

publication of such notices in the Official Gazette vested in Government with the result that no proceedings either under section 5 or under section 7 of the Bombay Land Requisition Act, 1948 could be taken for, the plots having already vested in Government could no longer be liable to such requisition. If, however, the Collector did not publish the notices in the Official Gazette in respect of acquisition of these plots, it would be competent for Government to direct under section 7 of the Bombay Land Requisition Act, 1948, the continuance of requisition of these plots.

Sd/- P.M.Lad.
15/10

o.s. Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 11557 dated the 17th October 1949.

K.N.P.
6/6
A.C.

Legal Department.

Prosecution of a landlord for not making allotments in conformity with the Press Note.

Bombay Land Requisition Act, 1948. Sec 6(5).

I am not in favour of prosecution in this case. Under the Press Note issued by Government at page 29 allotments for all the tenements proposed to be erected by them and these proposal are required to be sent to the office of the Controller of Accommodation at least one month before the building is ready for occupation. It is further stated in the Press Note that Government would not ordinarily interfere with these proposals but this would be subject to the following conditions:-

"1 The provisions of the Rent Act will continue to be in force.

2. There should be no element of Pugree in any form. If it appears to the Government that any consideration in the nature of Pugree is involved, Government will be at liberty to requisition the whole building and the landlord will not be given option to propose any other alternative allotment.

3. The allottees must be residents of Bombay etc.

4. Satisfactory documentary proof of their continuous residence should be submitted to Government before proposing allotments etc.

5. The proposals of the landlord must contain full particulars of each of the premises occupied by his allottees as stated therein.

This concession is granted as an experimental measure for one year. If it comes to the notice of Government within the course of the next year that this concession has been opposed, it would be totally withdrawn and Government will consider the question of imposing full control over the new building."

Reading the Press Note as a whole, it appears that in the event of the breach of any of the conditions mentioned therein, Government seems to have only retained

he power of requisitioning the new buildings. There is absolutely nothing in this note to indicate that the breach of any of those conditions would attract the provisions of section 6, sub-section (5) of the Bombay Land Requisition Act, 1948, viz. prosecution. In the circumstance, it would not appear desirable that Government should now threaten the landlords of the new buildings with prosecution for breach of any of the conditions mentioned in the Press Note before wiyhdrawing the concession extended to such buildings.

Sd/-

Additional Secretary to Government.

U.R. to R.D.(Accomm.), No. 11394, dated the 12th October 1949.

K.N.P.
6/6
4.C.

Submitted .

The stamp duty payable in respect of memorandum of agreement in Form B prescribed under the Bombay Land Requisition Determination of Compensation) Rules , 1949 and duplicate is agreed to be paid by Govt. under condition 5 of the agreement. The questions for R.L.A's consideration are:-

(1) whether Govt. would be exempt from the payment of stamp duty,

(2) If not whether the value of the stamp required and will vary with the amount of compensation fixed.

duty thereon as provided by Art 5(a) of Schedule I annexed to the Stamp Act.

In view of this position the second question does not arise.

A.L.R.

Reply may be :-

The made by R.D. (Accd is correct were of this the other ques- tion raised by R.D. (Acc) does not. survive

R.T.Katakki
31/10

R.L.A.

sd/- P.M.Lad,
31/10

K.N.P.
6/6
A.C.

Office of the R.L.A.

Stamp duty on agreement in form B prescribed under the Bombay Land equisition (Determination of Compensation) Rules, 1949.

The presumption made by the Revenue Department (Accommodation) is correct. In view of this the other question raised by the Revenue Department (Accommodation) does not survive.

d/- P.M.Lad,

3/11

o.c. Remembrancer of Legal Affairs.

.R. to R.D.(Acccom.) No. 12393 dated the 3rd Nov. 1949.

K.N.P.

6/6
4.C.

Office of the R.L.A.

Bombay Land Requisition Act, 1948 payme nt of urban immove- able property tax and Muncipial tax.

Ordinarily the owner of the land requisitioned under secion 5 of the Bombay Land Requisition Act, 1948 would be liable to pay the urban immoveable property tax and the muncipal tax unless in fixing the compensation the liability to pay these taxes is imposed on Government.

Sd/- P,M.Lad.
8/12

o.c. Remembrancer of Legal Affairs.

U.R. to R.D., (Accommd.) No. 14290, dated the 9th December 1949.

K.M.P.
6/6
4.C.

Officer of the R.L.A.

The question for R.L.A's consideration is whether under the Bombay Land Requisition (Exemption) Rules, 1948, the exemption granted in respect of buildings owned by a Cooperative Society or the members thereof from the provisions of sections 5 and 6 of the Bombay Land Requisition Act, 1948, can be restricted only to the first member owning the premises or whether such concession would be applicable to subsequent transferes also.

Under section 9(3) of the Bombay Cooperative Societies Act, an application made to the Registrar for registration shall be accompanied by a copy of the proposed bye-laws of the Society. Under section 10, if the Registrar is satisfied that a society has complied with the provisions of the Act, and the rules, and that its proposed bye-laws are not contrary to this Act or to the rules, he may register the society and its bye-laws-. Under section 16(1) no amendment of the bye-laws shallbe valid until approved by the resolution of a general meeting and and registered under the Act for which purpose a copy of the amendment shall be forwarded to the Registrar. Under sub-section (2), if the Registrar is satisfied that any amendment of the bye-laws is not contrary to the Act or to the rules, he may register the amendment. Section 17 provides that no person shall exercise the rights of a member of a Society unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be permitted by the rules or the bye-laws of such society. The term "member" as defined in clause (c) of section 3 includes a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with the rules and bye-laws of such society. Under section 19(2) a member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless

(a) he has held such share or interest for not less than one year;

(b) the transfer or charge is made - (i) to the society or (ii) to a member of the society or (iii) to a person whose application for membership has been accepted by the society, and

(c) the Committee has approved such transfer.

It is, therefore, evident that a member of a society can transfer his interest in the property of the society to another member of the society as definedi in section 3(c) or to a person whose application for membershiphas been accepted by the society. If, therefore under section 19(2) an original member of a Cooperative Housing Society who owns a flat transfers it to another member or to a person whose application for membership is accepted by the society, the transferee beibg a member of the society within the meaning of section 3(c) , would step into the shoes of the transferor. The transferee would therefore, be the member owing the premisses and if he occupies the same, it would be cove ed by the concession under condition (10 of colum 3 against item No. 1 in the first column of the Schedule appended to the Bom. L.R. (Exemption) Rules, 1948.

When the bye-laws of the society permit transfer of property between members inter se (see section 19(2) , if, as proposed by the Secretary, Revenue Department, the concesion of exemption of such premises from the provisions of sections 5 and 6 of the Bombay Land Requisition Act is made available only to the original members, any such prohibition would lead to conflict between the provisions of section 19(2) of Bombay Cooperative Societies Act and the bye--laws of the society on one hand and Bombay Land Requisition (Edemption) Rules , 1948, on the other. It would not also be proper to make any distinction between the first occupant members and thr subsequent transferee members when in the eye of the law no such distinction exists.

Sd/- P.M.Lad.
15/12
meer of

U.R. to R.D.